

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a); and (2) whether appellant has met his burden of proof to expand the acceptance of his claim to include additional medical conditions as causally related to the accepted February 24, 2018 employment injury.

### **FACTUAL HISTORY**

On March 6, 2018 appellant, then a 44-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2018 he sprained his right wrist and left ankle when he attempted to break his fall when he tripped over a floor mat while in the performance of duty. He stopped work on February 24, 2018.

On February 24, 2018 Dr. Gary Goodman, Board-certified in emergency medicine, treated appellant in the emergency department for a sprained ankle and a possible wrist fracture. He noted that he had fallen onto his left hand after he tripped on flooring. Dr. Goodman noted that appellant denied pain in his head or neck or loss of consciousness.

In an accident report dated February 24, 2018, appellant provided a history of striking his forehead, twisting his left ankle, and possibly injuring his wrist when he tripped and fell on a floor mat. He advised that he may have blacked out and that coworkers found him on his knees appearing disoriented.

In a report dated March 15, 2018, Dr. Stephen Reed, a Board-certified orthopedic surgeon, diagnosed pain in the left ankle and right wrist and noted that x-rays demonstrated no acute fractures or dislocations of the right wrist or abnormal findings of the left ankle. He opined that appellant could work light duty lifting no more than 15 pounds. On March 28, 2018 Dr. Reed diagnosed sprains of the left ankle and right wrist and advised that he should continue with his work restrictions.

On April 16, 2018 the employing establishment offered appellant a position as a modified mail processing clerk with restrictions of lifting, pushing, and pulling no more than 15 pounds.

On April 30, 2018 OWCP accepted the claim for left ankle sprain and a right wrist sprain.

In a report dated May 7, 2018, Dr. Reed noted that appellant had continued wrist pain and stiffness. He diagnosed right wrist and left ankle sprains. Dr. Reed indicated that appellant had not complained of headache, dizziness, or memory loss. He advised that appellant should continue

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<sup>3</sup> The Board notes that, following the February 8, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

with the described work restrictions. In a duty status report (Form CA-17) of even date, Dr. Reed determined that appellant could work with restrictions of lifting, carrying, pushing, pulling, and grasping no more than 15 pounds.

On June 11, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) from April 11 through May 25, 2018 due to disability from employment.

In a June 13, 2018 development letter, OWCP advised appellant that the employing establishment had offered him a limited-duty assignment for the claimed period of disability and requested evidence showing why he did not perform the offered position. It further requested that he submit medical evidence supporting disability for the period in question. OWCP afforded appellant 30 days to submit the requested information.

Thereafter, appellant submitted a June 11, 2018 report from Dr. Reed. He discussed appellant's history of "severe, worsening headaches in the past few weeks." Dr. Reed recommended that appellant seek treatment at the emergency department. In a Form CA-17 of even date, he repeated his previous work restrictions.

On July 19, 2018 Dr. Reed noted that appellant continued to experience daily severe headaches. He related:

"[Appellant] states that he hit his head in the initial injury, but all documentation of the incident did not make mention about his head injury and did not treat it. He states that he has had debilitating headaches for the past several months. [Appellant] also has trouble with slow speech and thinking of correct words at times. He also reports occasional paresthesia in bilateral findings since the initial injury."

Dr. Reed diagnosed a right wrist and hand sprain. He related that appellant had headaches and neurological issues "since his initial injury where he reportedly hit his head on the ground." Dr. Reed recommended that appellant's head injury be added to his workers' compensation claim. In a Form CA-17 of even date, he provided the same work restrictions.

By decision dated August 15, 2018, OWCP denied appellant's claim for wage-loss compensation for disability from work for the period April 11 through May 25, 2018. It noted that the employing establishment had offered him a limited-duty position within his restrictions during the claimed period.

Subsequently, OWCP received a report dated August 10, 2018 from Dr. Tifani Gleeson, an employing establishment physician Board-certified in occupational medicine. Dr. Gleeson advised that she had reviewed the medical evidence and found no causal relationship between appellant's "complaints of headache and the work event." She noted that appellant had denied headaches and loss of consciousness at the emergency department on the date of injury, and first mentioned headaches on June 11, 2018. Dr. Gleeson indicated that he "did not report any head injury or related symptoms per the medical records until over [three] months after the work event."

On August 20, 2018 OWCP notified appellant of its proposed termination of his wage-loss compensation under 20 C.F.R. § 10.500(a) as he had not accepted an offered limited-duty

assignment within his work restrictions. It afforded him 30 days to accept the assignment or provide reasons to justify his refusal.

Thereafter, appellant submitted a June 12, 2018 emergency room report regarding his treatment for headaches that had begun after a fall at work two months prior. A computerized tomography (CT) scan of the head showed no abnormality. Dr. Hector Rivera, a Board-certified internist, noted that appellant had presented with a persistent headache after a traumatic head injury and that an examination had shown no neurological defects.

By decision dated September 25, 2018, OWCP terminated appellant's wage-loss compensation, effective September 24, 2018, pursuant to 20 C.F.R. § 10.500(a). It noted that if the April 16, 2018 position was withdrawn or his condition worsened such that he could not perform the duties of the position he could file a notice of recurrence of disability.

In a report dated October 18, 2018, Dr. Reed discussed appellant's complaints of wrist pain lifting heavy objects and with motion. He noted that he was not working due to headaches and neurological symptoms. Dr. Reed indicated that appellant could return to work with the work restrictions previously described. He related that appellant had continued headaches and neurological issues after he had reportedly hit his head on the ground at the time of his initial injury. Dr. Reed related, "[He] describes that initial documentation of the incident did not make mention of the head injury, but he is having lasting, debilitating neurologic effects. We highly suggest that [he] gets his head injury added to the [workers' compensation] claim...." In a CA-17 form of even date, Dr. Reed found that appellant could work with the same restrictions.

On October 22, 2018 the employing establishment offered appellant a position as a modified processing clerk pushing and pulling no more than 15 pounds for eight hours per day. Appellant accepted the position, but indicated that he might have difficulty sweeping and grasping mail.

Dr. Reed continued to submit progress reports and CA-17 forms dated November 15, 2018 through August 1, 2019 substantially similar to his prior reports and providing the same work restrictions. On November 20, 2018 Dr. Vincent J. Mamone, an osteopath, found that appellant was unable to work on November 19, 2018 due to a headache, but could resume work on November 20, 2018.

By decision dated December 3, 2018, OWCP denied appellant's request to expand the acceptance of his claim to include a concussion as causally related to his accepted February 24, 2018 employment injury.

On September 25, 2019 appellant requested reconsideration of OWCP's September 25, 2018 termination decision. He submitted an August 1, 2019 report from Dr. Reed noting that he was performing limited duty and referring him for diagnostic studies.

On December 3, 2019 appellant, through counsel, requested reconsideration of the December 3, 2018 decision denying his request to expand the acceptance of his claim. Counsel maintained that he wanted his claim expanded to include neurological problems, which were "improperly termed as a concussion."

By decision dated December 5, 2019, OWCP denied modification of its September 25, 2018 termination decision.

By decision dated February 28, 2020, OWCP denied modification of its December 3, 2018 decision regarding the denial of expansion of the acceptance of the claim.

In a report dated September 11, 2020, Dr. Robert R. Reppy, an osteopath, discussed appellant's history of falling over a floor mat into a mail sorting machine, striking his left wrist, twisting his left ankle, and hitting his head on the machine. He noted that appellant indicated that he lost consciousness briefly, but that the emergency department physician had failed to document his head injury. Dr. Reppy indicated that he had returned to work modified duty from February to October 2018, but was terminated in October 2018 for missing too much time from work. He discussed appellant's history of a lumbar fusion after a motor vehicle accident in 2000 and current complaints of lumbar pain in a different location as a result of his employment injury. Dr. Reppy advised that appellant had "not been adequately worked-up at this point" and indicated that the etiology of the headache might be the cervical spine. He opined that appellant may have sustained a lumbar injury as a result of the work injury and referred him for a CT scan of the lumbar and cervical spine.

On December 5, 2020 appellant, through counsel, requested reconsideration of OWCP's December 5, 2019 and February 28, 2020 decisions. He contended that OWCP should expand the acceptance of his claim to include neurological problems wrongly identified as concussion. Counsel noted that an October 18, 2018 hospital report had provided a history of appellant experiencing headaches and neurological problems since the employment injury and that his physician recommended that the head injury be included in his workers' compensation claim. He maintained that Dr. Reppy's September 11, 2020 report supported appellant's claim.

By decision dated February 19, 2021, OWCP denied appellant's request for reconsideration of the merits of the December 5, 2019 decision regarding the termination of wage-loss compensation under 20 C.F.R. § 10.500(a), pursuant to 5 U.S.C. § 8128(a).

By decision dated February 24, 2021, OWCP denied modification of its February 28, 2020 decision regarding the denial of expansion of the acceptance of the claim.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

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<sup>4</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. In his timely request for reconsideration of OWCP's termination of his wage-loss compensation under section 10.500(a), counsel asserted that OWCP should expand acceptance of his claim and referenced Dr. Reppy's September 11, 2020 report. His contention, however, is not relevant to the underlying issue of whether OWCP properly terminated appellant's wage-loss compensation under section 10.500(a). As that issue is medical in nature, it can only be resolved through the submission of medical evidence from a qualified physician.<sup>9</sup> Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant submitted a report dated September 11, 2020, wherein Dr. Reppy indicated that appellant had returned to work from February to October 2018, but had been terminated from employment in October 2018 because of absences. He did not, however, address the issue of whether appellant was capable of performing the April 16, 2018 position offered by the employing establishment. The submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> Thus, the

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<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *See G.B.*, Docket No. 21-0464 (issued November 19, 2021); *D.H.*, Docket No. 19-1308 (issued January 7, 2020).

<sup>10</sup> *See D.J.*, Docket No. 21-0371 (issued November 24, 2021).

Board finds that appellant has not presented relevant and pertinent new evidence not previously considered and, thus, is not entitled to a merit review based on the third requirement under section 10.606(b)(3).<sup>11</sup>

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>13</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>14</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>15</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional medical conditions as causally related to the accepted February 24, 2018 employment injury.

In a report dated July 19, 2018, Dr. Reed discussed appellant's history of severe headaches and difficulty thinking for the past several months. He noted that appellant related that he had hit his head at the time of his employment injury, even though it was not documented in contemporaneous evidence. Dr. Reed opined that appellant had neurological issues and a headache since his injury when he "reportedly hit his head on the ground." He recommended that OWCP expand the acceptance of his claim to include a head injury. Dr. Reed submitted multiple reports in 2018 and 2019 providing essentially the same findings and recommendations. However, these reports merely provided a conclusory opinion regarding causal relationship. The Board has

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<sup>11</sup> 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>12</sup> *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

<sup>13</sup> *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>14</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>15</sup> *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>16</sup> *Id.*

held that a medical opinion that is conclusory in nature is of limited probative value.<sup>17</sup> Dr. Reed did not explain with sufficient medical rationale how he concluded that the neurological issues and headache were caused by the accepted employment injury.<sup>18</sup> His reports, therefore, are insufficient to meet appellant's burden of proof.

In an emergency department report dated June 12, 2018, Dr. Rivera discussed appellant's history of headaches beginning after a fall at work two months earlier. He found that appellant had a persistent headache after a traumatic injury to his head. Dr. Rivera indicated that an examination revealed no neurological defects. However, he did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>19</sup> This report is, therefore, insufficient to establish expansion of appellant's claim.

On September 11, 2020 Dr. Reppy reviewed appellant's history of falling at work hitting his head and left wrist and twisting his left ankle. He noted that appellant related that he had lost consciousness, but that the physician at the emergency department had not discussed his head injury. Dr. Reppy found that he required additional testing to determine the etiology of his headache, which he opined might result from his cervical spine. He additionally advised that appellant had lumbar pain due to his employment injury and recommended CT scans of the cervical and lumbar spine. Dr. Reppy, however, did not provide a firm diagnosis of a condition results from the accepted injury, nor did he provide rationale explaining his conclusory opinion on causal relationship. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of diminished probative value.<sup>20</sup>

On June 11, 2018 Dr. Reed noted that appellant had a history of severe and worsening headaches for the past few weeks and recommended that he obtain treatment at the emergency department. On November 20, 2018 Dr. Mamone found that appellant was unable to work due to a headache. Neither physician, however, addressed the cause of the headaches. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>21</sup> Consequently, this evidence is also insufficient to meet appellant's burden of proof.

The remaining evidence fails to support appellant's request to expand the acceptance of his claim. In a report dated August 10, 2018, Dr. Gleeson advised that she had reviewed the medical evidence and found no causal relationship between his headaches and the accepted employment injury, noting that he had denied headaches and loss of consciousness at the emergency department on the date of injury and did not complain of headaches for three months.

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<sup>17</sup> See *J.L.*, Docket No. 20-1162 (issued October 7, 2021); *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>18</sup> *J.L.*, *id.*; *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>19</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> See *T.T.*, Docket No. 20-0687 (issued December 11, 2020); *J.P.*, Docket No. 20-0381 (issued July 28, 2020).

<sup>21</sup> *Supra* note 19.



As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to accept additional employment-related conditions.<sup>22</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The Board further finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional medical conditions as causally related to the accepted February 24, 2018 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 19 and 24, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 28, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>22</sup> See *A.M.*, Docket No. 20-0545 (issued May 20, 2021); *A.T.*, Docket No. 19-1608 (issued April 21, 2020).